

### **REMARKS**

In the Office Action mailed November 26, 2008 as entered in the above-captioned matter, Claims 1-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura et al. (U.S. Patent Publication No. 2003/0167466) ("Nakamura") in view of Florin (U.S. Patent No. 5,583,560) ("Florin") and further in view of Nikolovska, (U.S. Patent No. 6,505,194) ("Nikolovska"). The applicant respectfully traverses these rejections and requests reconsideration.

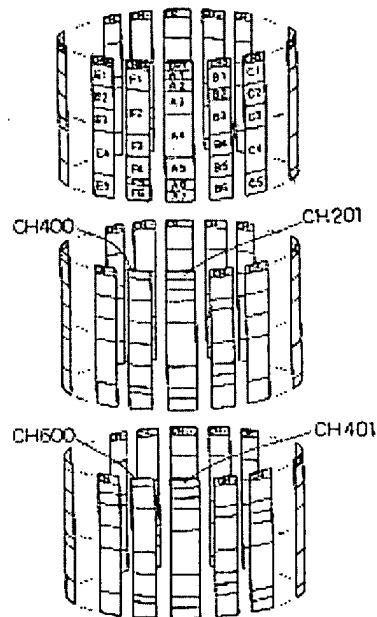
#### **Rejections under 35 U.S.C. §103(a)**

Claims 1-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura in view of Florin and further in view of Nikolovska.

##### *Claims 1 and 9*

In making this rejection, the Examiner relies upon Nakamura's presentation of a 3-dimensional cylindrical display and more particularly upon Nakamura disclosing "multiple 3-dimensional cylindrical displays [that display] program guide information."<sup>1</sup> While Nakamura does disclose (in his FIG. 15, shown at the right) a multiple-cylinder embodiment, it is noted that each cylinder presents, for each of a plurality of channels, programming content information for a plurality of different times.

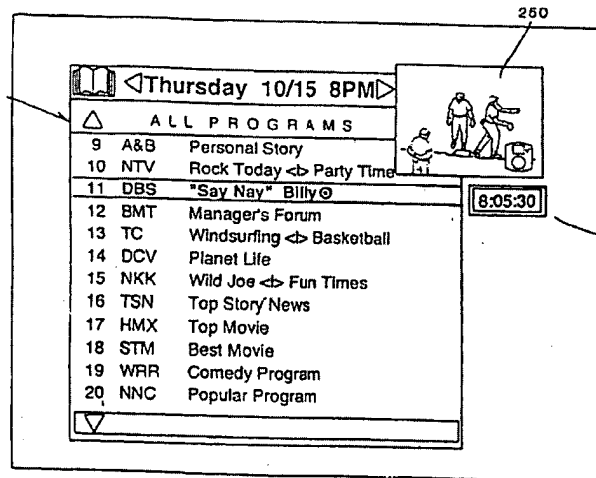
As acknowledged by the Examiner, this is different from the applicant's claimed approach. For example, the applicant specifies that each 3-dimensional object will "correspond to a different time."



<sup>1</sup> Office Communication of November 26, 2008 at page 3, lines 1-2.

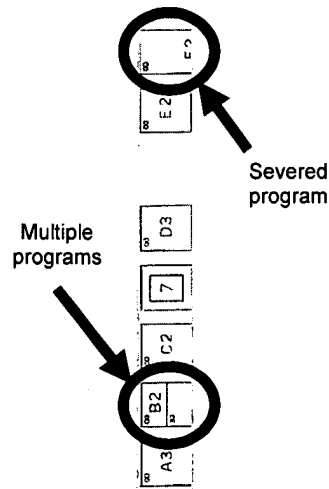
To meet this deficiency in Nakamura, the Examiner then relies upon Florin.

Referring specifically to Florin's FIG. 12 (shown in part at the right), the Examiner notes that Florin "discloses a program guide that can be configured so as to display only programs from a specific time period."<sup>2</sup>



With this as a presumed point of inspiration, the Examiner then suggests that it would be "an obvious matter of design choice" to "turn the plurality of [Nakamura's] vertical cylinders . . . on their side . . . [and] one would have a plurality of horizontal cylinders, and there would be a plurality of different times represented."<sup>3</sup> The Examiner then suggests that the channel columns of Nakamura can be broken up into different time segments to yield a "cylinder denoting a time period."<sup>4</sup>

With all due respect, the applicant observes and submits that making such extreme modifications of Nakamura, with or without the influence of Florin, is hardly obvious and is certainly not a mere design choice. Note, for example, that one does not achieve a usable result by merely making the modifications noted by the Examiner. In the modified view of Nakamura's FIG. 2 shown at the right to accord with such a change, one



<sup>2</sup> Office Communication dated November 26, 2008 at page 3, lines 5-6.

<sup>3</sup> Id. at page 3, lines 8-11.

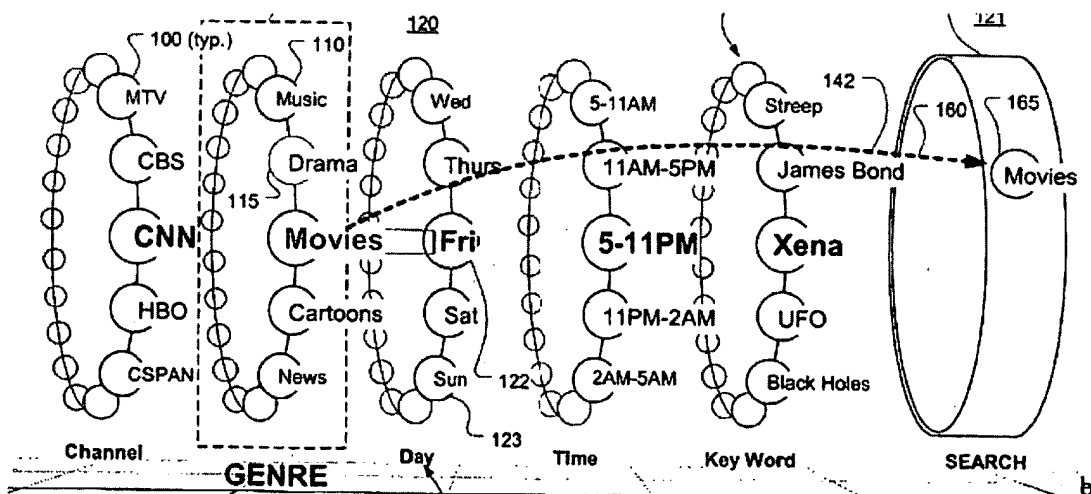
<sup>4</sup> Id. at page 3, line 16.

immediately discovers corresponding resulting problems. For example, while some of the programs fit within the one time being displayed, a longer program at the top is severed and another channel hosts one complete program and the beginning of another program. There is nothing in either Nakamura or Florin regarding how one might handle such problems and their corresponding ambiguity. As a result, it is clearly inappropriate to view such a significant alteration of Nakamura as being only a choice of otherwise equivalent designs.

At least one other point is deserving of mention in these regards as well. Florin, as acknowledged by the Examiner, teaches providing on a display *only* the programming information that corresponds to a given time. The applicant's claims, however, require displaying programming information for a *plurality* of times (albeit on different 3-dimensional objects). Since a fair combination of Florin's requirement that only a single time be presented on the display with Nakamura's cylinder will yield a display that only provides programming information for a *single* time, a combination of Florin with Nakamura cannot be fairly said to anticipate the applicant's claimed requirements in this regard.

The applicant's claims also provide for being able to independently scroll through the information on a single 3-dimensional object, hence leaving the other 3-dimensional objects as they were. The Examiner suggests that Nikolovska can be used to supplant this claimed recitation with particular reliance being based upon Nikolovska's FIGS. 4-9.

Nikolovska's FIG. 4 is reproduced below for the convenience of the Examiner and can



be seen to be comprised of a series of what Nikolovska refers to as “beads.” It is each grouping of these beads that the Examiner is relying upon as comprising independently scrollable 3-dimensional displays.

The applicant notes, however, that these figures from Nikolovska do not constitute a display of selectable content (even though Nikolovska is, in fact, directed to a programming guide). Instead, these beads are used as a mechanism to frame a query that is then posed to a database. Using these beads, the user selects a particular search criterion in each of a plurality of search categories (such as channel, genre, day, time, and so forth) to formulate their search. In this setting, it constitutes common sense to permit the user to independently manipulate each collection of beads as this accords with how one ordinarily builds a search query – one criterion at a time. To put this differently, this display paradigm is proposed for use in a setting where the user is seeking to learn what *might* be available and not for displaying what is, *in fact*, available.

When it comes time to display the *results* of such a search, Nikolovska advocates a considerably different approach. As shown in his FIGS. 12 and 14 below<sup>5</sup>, Nikolovsk’s

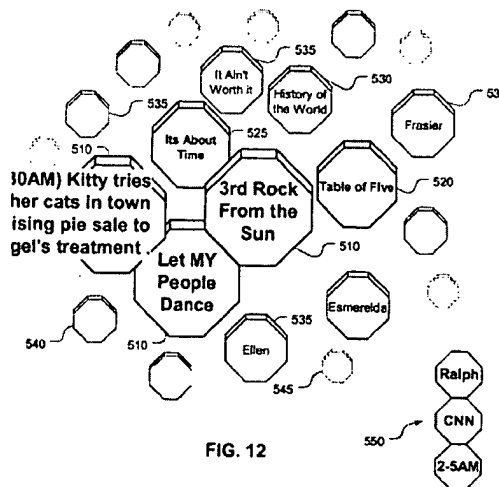
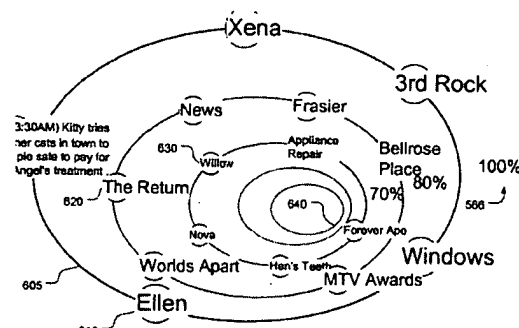


FIG. 12



<sup>5</sup> Note – only portions of these figures are shown here.

Resultant programming guide displays are completely different from his search-query-formulation displays and are also completely different from anything that the applicant has disclosed or seeks to claim.

Taking Nikolovsk in whole and in context, this reference teaches using one kind of display approach for formulating a search query and a completely different approach for displaying the results of that search. An electronic programming guide of the kind being claimed by the applicant is far more akin to the latter than the former. The applicant respectfully observes that Nikolovsk's teachings would actually motivate a person skilled in the art *away* from independently scrollable 3-dimensional objects when displaying available programming results, as Nikolovsk eschews such an approach even though he was obviously keenly aware of such a display paradigm since he adopted something similar in his query-formulation display.

Accordingly, and with all due respect, the applicant submits that no combination of these three references, and certainly no fair combination that does not rely upon the hindsight application of the applicant's own teachings, will yield the recitations of independent claims 1 and 9. Accordingly, the applicant respectfully submits that claims 1 and 9 are allowable over the references of record.

#### Dependent claims 2-8 and 10-13

These remaining claims are ultimately dependent upon one of the independent claims shown above to be allowable. While the applicant believes that other arguments are available to highlight the allowable subject matter presented in various ones of these dependent claims, the applicant also believes that the comments set forth herein regarding allowability of the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity and expedited consideration.

#### Conclusion

There being no other objections to or rejections of the claims, the Applicant respectfully submits that claims 1-13 may be passed to allowance. If the Examiner should

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have any other points of concern, the Examiner is expressly invited to contact the undersigned by telephone to discuss those concerns and to seek an amicable resolution.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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By:



Steven G. Parmelee  
Registration No. 28,790

120 South LaSalle Street, Suite 1600  
Chicago, Illinois 60603-4277  
Telephone: 312/577-7000  
Facsimile: 312/577-7007